IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1266 OF 2006.
IN
CRIMINAL APPEAL NO.1208 OF 2006.

Dnyandev Bapu Matkar & Anr. ...Applicants
Versus.
The State of Maharashtra ... Respondent

Shri Ajit Kenjale for the Applicants.

Shri A.S.Shitole, A.P.P for the Respondent.

CORAM : ABHAY S.OKA, J.

DATED : December 14, 2006.

P.C.:

1. The Applicants have been convicted for the offence punishable under section 306 read with section 34 of the Indian Penal Code. The substantive sentence is rigorous imprisonment for seven years. Fine of Rs.1,000/- has been imposed.

2. It is not in dispute that the Applicants were on bail throughout the trial.

3. My attention has been invited to the fact that there are two dying declarations of the deceased. One is recorded by Police Head Constable Shri Y.J. Tate and second one is recorded on the same day by a Special Executive Magistrate. So far as first dying declaration is concerned, the concerned Police Head Constable was not examined by the prosecution. However, the Investigating Officer P.W.6 admitted that there was such

a dying declaration recorded by Police Head Constable Shri Tate. Infact, he stated that he carried out the investigation on the basis of the complaint and both dying declarations. In the dying declaration of the deceased recorded by the Police Head Constable Shri Tate, no allegation has been made against the Applicant No.2 and the allegations are only against the Applicant No.1. However, in the dying declaration recorded before the Special Executive Magistrate allegations are made against the both. The Applicant No.1 is brother-in-law of the deceased and the Applicant No.2 is the son of the Applicant No.1. The husband of the deceased was examined who deposed about certain harassment by the Applicants to the deceased. The allegations made by him are vague and general in nature.

4. Considering the two inconsistent dying declarations, the Applicant No.2 is entitled to be enlarged on bail. So far as the Applicant No.1 is concerned, his age is 75 years and he was on bail throughout the trial. On this ground, he is also entitled to be enlarged on bail.

5. Hence, I pass the following order:

(i) The Applicants shall be enlarged on the same bail on which they were enlarged during the pendency

of trial subject to filing fresh bail bonds.

(ii) Bail is granted subject to condition that the Applicants will report to Koregaon Police Station, District Satara on first Saturday of every calendar month till the disposal of the Appeal.

Judge.